

No. 9(181-8 Lab./5703. In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s The Panipat Co-operative Distillery Ltd., Panipat.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 465 of 1978

between

THE WORKMEN AND THE MANAGEMENT OF M/S THE PANIPAT CO-OPERATIVE DISTILLERY LTD.,  
PANIPAT

Present :-

Shri N.R. Munjal, for the workmen.

Shri R.S. Malik, for the management.

#### AWARD

By order No. ID/KNL/37-78/43842, dated 4th October, 1978, the Governor of Haryana referred the following disputes between the management of M/s The Panipat Co-operative Distillery Ltd., Panipat and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :-

1. Whether the grades and scales of workers working in this establishment should be at par with the workers working in Co-operative Sugar Mills Ltd., Panipat? If so, with what details?
2. Whether the workers should be given pay and position according to their work and capability? If so, with what details?
3. Whether workers should be provided with warm uniforms in winter season? If so, with what details?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed on 5th February, 1979 as per term of reference and the case was fixed for the evidence of the workmen, who examined Shri Surinder Singh, Shri Subhash, Shri U.C. Sharma and Shri Gian Chand as WW-1 to WW-4 and closed their case. Then the case was fixed for the evidence of the management, who examined Shri Chander Parkash as MW-1 and closed their case. During time of recording of evidence the management moved an application for deciding issue No. 1 as per terms of settlement, dated 22nd September, 1979. This application was resisted by the workmen on the ground that the settlement arrived at by the management was not with the union raising the demands under reference but by the other union. By my order, dated 30th May, 1980 the management was called upon to prove the representative character of the union entering into the settlement. Arguments were heard on all the issues. I now give my finding issues-wise.

**Issue No. 1.** MW-1 stated that he had brought original settlement, dated 22nd September, 1979 copy Exhibit M-1. Copy of letter of authority on form F was Exhibit M-2. In cross examination he stated that form F was given on behalf of the workmen to the management. As regards the settlement the representative for the management argued that the settlement was arrived at before the Labour Officer under section 12(3) of the Industrial Disputes Act and it was binding on all the workmen. He cited AIR 1977 (S.C.) 322 that the workmen by receiving benefit of the settlement had acquiesced to the settlement. On the other hand the learned representative for the workmen contended that the demands under reference were raised by Sugar Mills Mazdoor Sangh, Panipat whereas the settlement was with the Distillery Janta Mazdoor Union. He further contended that the settlement was not under section 12(3) because on the failure report of the Conciliation Officer the matter was referred for adjudication by the State Government. He further stated that the Conciliation Officer and the management did not take into confidence Sugar Mill Mazdoor Sangh at the time of settlement. He cited 1977 Vol. 34 FLR page 192 and 195. I have gone through the settlement. It is between the management and the Distillery Janta Mazdoor Union which is stated to be representing more than 90 per cent workmen of the total strength of the Distillery permanent staff as shown in settlement. The settlement is dated 22nd September, 1979. The demand notice pending before the Labour Officer-cum-Conciliation Officer is stated to be dated 6th July, 1979 and here is also a reference of the present reference number 465 of 1978 pending before this Industrial Tribunal. The settlement is about revision of grades. Demand notice, dated 6th July, 1979 was not placed by the management on the file. I find that the demand of grades and scales under reference (Issue No. 1) is quite distinct from the grades and scales given in Exhibit M-1. In the issue under reference the workmen demand a parity between the grades and scales in the distillery and the Sugar Mills, whereas in the settlement there is a revision of grade there being no mention of the grades and scales applicable to the Sugar Mills workers. Thus by the above settlement they are not stopped from contesting issue No. 1. As regards acceptance of demand of new grades or increase in wages that will be treated as a voluntary increase for the workmen who were not party to the above said settlement.

WW-1 stated that he was employed in the Distillery. The management of the Distillery and Sugar Mills was the same, the Managing Director, Chief Engineer, Civil Engineer etc holding office in the distillery as well in the Sugar Mills. The personnels of the two units were inter-transferable but the grades of pay differ. He denied the suggestion that the balance sheet of the two units was separate. WW-2 corroborated the statement of WW-1. WW-3 stated that he had brought balance sheet of the Distillery from its inception to 1978-79 which were Exhibit W-1 to W-5. He further stated that a chart relating to salary and wages etc. was prepared by the management after consulting 5-6 Distilleries co-existing with Sugar Mills. But there was no such distillery which had a bottling plant also. These Distilleries produce only industrial alcohol. The grades in these units were different. The Board of Directors of the two units was common. Dispensary for workers was also same. He further stated that there was no procedure for the transfer of staff from one unit to the other. Shri Nahar Singh, Cashier, Shri Ram Sahai, Shri Ved Parkash, Clerks were employees of the Sugar Mills but working in the distillery. WW-4 stated that when the distillery was started, some staff was transferred from the Sugar Mills and some was recruited from outside. The Managing Director, Security Officer, Electrical Engineer, Civil Engineer were the same for both the units. Shri Joginder Singh, Darshan Singh, Nahar Singh, Ved Parkash and Ram Sahai, clerks were employees of the Sugar Mills but working in the distillery and so is Surinder Kumar, son of Shri Ram Singh. He further stated that in their union membership and officers were from both the units. He produced copies of list from Hindustan Sugar Mills and from different distilleries Exhibit WW-4 to Exhibit WW-4/5. In cross examination he stated that the Security Officer and Engineer receive their salaries from Sugar Mills. He stated that he could not state if woollen uniforms were given to the workers of the Distillery from where he had brought information Exhibit WW-4/1 to WW-4/5. He further stated that in the year 1979-80 bonus of 8.33 per cent was given to the workers of Sugar Mills while 20 per cent was paid to the staff of the Distillery.

The main contention of the learned representative for the workmen is that both the units were owned by the same Co-operative Society and were under the same management and Board of Directors. So much so that senior officers of the two units were common. He contended that there should be parity in the grades and scales of pay of the workmen performing the same duty in

the two units. The learned representative for the management argued that the two units were distinct as far as profit and loss was concerned. Separate accounts were maintained for the distillery and the Sugar Mills. He further pointed out that the Sugar Mill was governed by the second Sugar Wage Board on All-India basis in respect to grades and scales of pay, category of workmen and their norms of work etc. Whereas distillery was governed by the Minimum Wages fixed by the State Government. Even two units were not at par in the levy of excise duty. Sugar Mill was governed by Central Excise duty and the distillery under the State Excise Rules. He further contended that the Sugar Mill was a seasonal unit whereas distillery worked throughout the year.

It is admitted fact that the bonus was paid 8.33 per cent to Sugar Mills workers whereas Distillery people received 20 per cent. There was no parity in respect of bonus which was much higher in the distillery. It goes to prove that the balance sheet and profit and loss account was separate of the two units. A single management or proprietor may own many factories and may transfer from one unit to another. It was not a case for grades and scales of pay to be equal in all the factories or units under the same management. A transfer from one unit to another is prerogative of the management but the pay and benefits of the transferred employee are always protected. I am in complete agreement with Shri R.S. Malik, the representative for the management in his argument and hold issue No. 1 against the workmen.

*Issue No. 2.*—No evidence was led on this issue however the management had admitted in the written statement that duties were provided to all the employees according to their grades and designations. In case a workman is not given pay or work according to his classification, there were authorities to look into the grievance of the workmen or assess the claim or benefit admissible to such workmen. This issue is decided accordingly.

*Issue No. 3.*—No evidence on this issue was led. Even Shri Gian Chand, General Secretary WW-4 could not state if winter uniform was given to the workmen in any of the distillery referred in Exhibit WW-4/1 to WW-4/5. However, I do not find any justification in the contention of Shri R.S. Malik that it will entail heavy expenditure on the uniforms. I do not find if all the workmen of the distillery are placed on duty where cold affected him adversely. In case there is no outdoor work in the winter season there was no necessity of warm uniforms. The position would have been clear in case evidence was led by the workmen justifying their demand. Therefore, this issue is also decided against the workmen.

On the findings given by me on the issues above, I give my award that the workmen are not entitled to any relief. I order accordingly.

The 8th May, 1981.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 448, dated 12th May, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

The 14th September, 1981

No. 9 (1)-81-Lab/10149.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s i) Haryana State Minor Irrigation Tube-well Corporation Ltd. Chandigarh (ii) Executive Engineer, Workshop and Store Division M. I. T. C., Karnal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, ROHTAK

Reference No. 82 of 1978

between

SHRI NEBH RAJ, WORKMAN AND THE MANAGEMENT OF M/S. (I) HARYANA STATE  
MINOR IRRIGATION TUBEWELLS CORPORATION LTD., CHANDIGARH (II)  
EXECUTIVE ENGINEER, WORKSHOP AND STORE DIVISION  
M. I. T. C., KARNAL

Present :—

Shri Karan Singh, for the workman.

Shri W. C. Sharma, for the management.

AWARD

This reference has been referred to this Court by the Hon'ble Governor vide his order No. ID CN/532-77/23827, dated 2nd June, 1978 under section 10 (i) (c) of the I. D. Act, 1947 for

adjudication of the dispute existing between Shri Nebh Raj, workman and the management of M/s. (i) Haryana State Minor Irrigation Tubewells Corporation Ltd., Chandigarh (ii) Executive Engineer, Workshop and Store M. I. T. C. Karnal. The term of the reference was :—

Whether the termination of services of Shri Nebh Raj was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices on 23rd November, 1978, filed their respective pleadings and the only issue "whether the termination of Shri Nebh Raj was justified and in order? If not, to what relief is he entitled?"

The management did not examine any witness and Shri V.K. Mittal tendered the attested copies of the appointment letter Ex. M-1, one month notice Exhibit N-2, 10 days notice Exhibit M-3, re-appointment letter Exhibit M-4 and copies of extract from P. W. D. Code Para 1. 129 as Exhibit M-5 and para 1.148 Exhibit M-6 and closed the case of the management on 25th June, 1979. Shri Nebh Raj appeared as his own witness who deposed that he worked as Carpenter with the respondent since 1972. The management terminated his services on 28th February, 1976 at that time he was getting Rs. 196 P. M. the salary of a fitter and he was not given the scale of a Carpenter which was higher than that of the fitter. He produced letters Exhibit W-1 and W-2 which were the photo copies of the original issued to him. He was not paid any compensation nor any notice was served on him nor notice pay was given to him at the time of his termination. In his cross-examination the workman has deposed that he was appointed as Fitter and received only two letters Exhibit W-1 and Exhibit W-2 and denied the suggestion that he was appointed on Artificier in the scale of Rs 85—3—115. He also denied the suggestion that the post of Artificier was abolished. The parties preferred to file written arguments and I have gone through the written arguments filed by them and also through the evidence oral as well as documentary carefully and decide the issue as under :—

The management has relied on the appointment letters Exhibit M-1 and Exhibit M-4 and also on notices of termination in accordance with the terms of appointment contained in Exhibit M-1 and M-4 which are Exhibit M-3 and Exhibit M-2 which are issued on the basis of the provisions contained in para 1.129 and para 1.148 of the P. W. D. Code. The management has not produced any witness to prove these documents nor these documents have been proved otherwise. The workman was also not confronted with these documents nor it was put to him that the same were delivered to him. From the written statement filed by the management it is clear from the opening words of para I that Shri Nebh Raj was designated as Carpenter at the time of the termination and from other documents such as Exhibit M-3 and Exhibit M-2 the contention of the management is belied that Shri Nebh Raj was working as Artificier. The workman has produced photocopy of letters issued to him are Exhibit W-1 and Exhibit W-2 wherein also he has been addressed as 'Nebh Raj Carpenter' and not 'Artificiers'. The workman was examined on oath when he came to the witness box but he was not put any suggestion to the fact that he was an Artificier and never worked as Carpenter. The management has failed to prove the justification of the termination to the least of my satisfaction and the appointment letters and the notices are an afterthought and a false case made out against the workman in their effort to prove that the workman was appointed as Artificier the post which has now been abolished. In fact it has been proved beyond doubt that the workman was working as Carpenter. It has also been an admitted and a proved fact that the workman was not paid any retrenchment compensation which is condition precedent under section 25(F) of the I.D. Act, 1947 and if the same is not complied with the order of termination become void and inoperative.

The workman served the notice of demand after a lapse of one and a half year from the date of his termination and he is guilty of delay so he is not entitled to full back wages as he has also not filed his arguments for about a year. I am therefore constrained to hold that the termination of the workman is neither justified nor in order and the workman is granted the relief of 50 per cent back wages and re-instatement with continuity of service. The reference is answered and returned accordingly.

Dated the 29th August, 1980.

**BANWARI LAL DALAL.**

Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

Endst. No. 3211, dated 1st September, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment, Departments, Chandigarh as required under section 15 of the I. D. Act, 1947,

**BANWARI LAL DALAL,**

Presiding Officer,  
Rohtak.